



ORIGINAL

Kathleen Q. Abernathy
Vice President
Federal Regulatory

AirTouch Communications
1818 N Street N.W.
Washington, DC 20036

Telephone: 202 293-4960
Facsimile: 202 293-4970

September 28, 1994

EX PARTE OR LATE FILED

EX PARTE

RECEIVED

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

SEP 28 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

RE: PR Docket No. 94-105; Petition of the People of the State of California
and the Public Utilities Commission of the State of California to Retain
Regulatory Authority Over Intrastate Cellular Service Rates

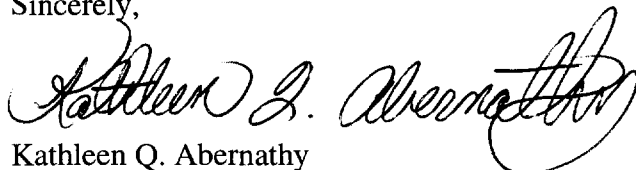
Dear Mr. Caton:

On Wednesday, September 28, 1994, Brian Kidney, David Gross and I, on behalf of AirTouch Communications, met with Sharon Diskin, Office of the General Counsel, and Kelly Cameron and Regina Harrison, Private Radio Bureau. We discussed the information in the attached material. Please associate this material with the above-referenced proceeding.

Two copies of this notice were submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me at 202-293-4960 should you have any questions or require additional information concerning this matter.

Sincerely,


Kathleen Q. Abernathy

Attachment

cc: Sharon Diskin
Kelly Cameron
Regina Harrison

No. of Copies rec'd
List ABCDE



AIRTOUCH COMMUNICATIONS

PRESENTATION TO FCC IN PR DOCKET 94-105

SEP 28 1994

FBI/DOJ

CPUC Confidentiality Request

Burden is on CPUC to demonstrate that market conditions not yet adequate to ensure just and reasonable rates

CPUC decided to supply confidential data to meet that burden rather than relying on public data from the California proceeding

Confidential data obtained from two sources:

1. CPUC ordered parties to submit data regarding rate plan beyond what was available from public tariffs and requested capacity utilization for the carriers' cell sites
2. CPUC obtained confidential data from the California Attorney General's Office that was obtained from carriers by subpoena and protected pursuant to California Government Code Sections 11180 et seq.

Redacted version of the CPUC Petition made available to the public omitted significant portions of the text and the supporting appendices, thus denying parties a "reasonable opportunity for public comment"

CPUC later, at request of FCC and after date for filing Petition had passed, modified its filing and released portion of confidential data stating that such information was derived from publicly available documents

Information Submitted During CPUC Investigation

In response to CPUC request during investigation of cellular rates, AirTouch and other carriers submitted the following confidential information:

1. Carrier and market specific commercially sensitive data regarding subscribership by rate plan
2. Commercially sensitive data and extensive calculations regarding capacity utilization

Resellers requested access to this confidential information and a CPUC ALJ, after reviewing briefs on request, concluded that the following information could be made available pursuant to a nondisclosure agreement (although resellers ultimately did not request access):

1. Aggregate numbers of subscribers on the discount and basic plans
2. Aggregate number of subscribers divided between wholesale and retail service
3. For capacity utilization, only given access to total number of cell sites in operation

ALJ prohibited access to number of subscribers per rate plan and all capacity utilization data other than number cell sectors

National Cellular Resellers Association now requests access to **all** of the confidential information

Attorney General Investigation

None of the information provided to the CPUC by the Attorney General was obtained in the context of the CPUC wireless investigation. It falls completely outside the scope of the CPUC protective order.

Documents provided by AirTouch to AG were accompanied by letter stating that all of the submitted documents and information are considered to be confidential and private business information of the company and of competitive significance

When the AG released the information to the CPUC it stated that the CPUC must not disclose publicly the information obtained

Disclosure of Confidential Information is a Criminal Offense and an Abuse of Agency Discretion

Disclosure of confidential information would violate Federal Trade Secrets Act, 18 U.S.C. sec. 1905

Courts have held that Act is coextensive with that of Exemption 4 of FOIA which protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential

Thus, if information falls within the scope of Exemption 4 its release is prohibited under the Federal Trade Secrets Act

Documents produced by AirTouch reveal sensitive market data regarding subscribers in each rate plan and cell site capacity utilization

Disclosure to competitors, such as resellers, could place AirTouch at a serious competitive disadvantage, affecting its ability to compete in the market and result in direct harm

A CPUC ALJ maintained confidentiality of this information after concluding that information on number of subscribers has significant economic value to competitors and disclosure would cause imminent and direct harm of major consequence

FCC Need Not Rely On Confidential Information

FCC has not relied on confidential information in proceedings of comparable nature and scope

Nondisclosure agreements only used in complaint and application proceedings where limited number of parties and use of such agreements was with consent of party whose confidential data was being disclosed

The FCC and the resellers already have access to confidential, aggregate subscriber information.

Important for FCC not to delay proceeding because continued regulation by CPUC is costing consumers \$250 million per year.